

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

KIRK CURLS,

Plaintiff,

v.

UNION PACIFIC RAILROAD COMPANY,

Defendant.

NO. CIV. S-02-703 LKK/JFM

O R D E R

The court is in receipt of plaintiff's counsel's motion to reset the case for Pretrial Conference. The court's previous order, dated April 29, 2005, warned that "[s]hould the case languish an additional three months, it will be dismissed for lack of prosecution." It is symptomatic of plaintiff's counsel's problems that this motion was filed on July 29, 2005, the very last day such a motion could be filed As is apparently

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1 inevitable, plaintiff's counsel was in trial and thus did not  
2 appear on the appointed day.<sup>1</sup> Today, the court attempted to  
3 reach counsel on another failure to conform to the court's order  
4 in yet another case, only to learn that he was in trial, and  
5 thus not available.

6 The court wishes to be candid. It has no doubt of  
7 counsel's general competence - that is not the issue. The issue  
8 is the inability of counsel to attend to the instant case  
9 because he has assumed responsibility for more cases than he can  
10 handle.

11 The court has no desire to punish plaintiff for counsel's  
12 inability to represent him, nor frankly to substitute a  
13 malpractice action for the instant litigation. On the other  
14 hand, the court cannot contenance counsel's behavior. The court  
15 will, however, much against its better judgment, give  
16 plaintiff's counsel one more chance to demonstrate an ability to  
17 represent his client in the instant matter or to obtain counsel  
18 that can do so. Plaintiff is granted an additional three months  
19 to demonstrate that he has counsel able to represent him. With  
20 reluctance, the court will dismiss the matter should such a  
21 showing not be made.

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25 <sup>1</sup> Defendant's counsel also did not appear, but there is  
26 nothing in the file indicating that he was given notice.

1       The present motion is DENIED.

2       IT IS SO ORDERED.

3       DATED: August 1, 2005.

4                               /s/Lawrence K. Karlton  
5                               LAWRENCE K. KARLTON  
6                               SENIOR JUDGE  
7                               UNITED STATES DISTRICT COURT  
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